
HOUSE BILL 1398

State of Washington

65th Legislature

2017 Regular Session

By Representatives McCabe, Lovick, Haler, Klippert, Rodne, Hayes, Irwin, Johnson, Griffey, Holy, Caldier, and Muri

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1 AN ACT Relating to making crimes and threats against persons
2 because of their occupation as a law enforcement officer a hate
3 crime; amending RCW 9A.36.078, 9A.36.080, 9A.46.060, 9A.36.031, and
4 36.28A.030; prescribing penalties; and declaring an emergency.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 **Sec. 1.** RCW 9A.36.078 and 1993 c 127 s 1 are each amended to
7 read as follows:

8 The legislature finds that crimes and threats against persons
9 because of their race, color, religion, ancestry, national origin,
10 gender, occupation as a law enforcement officer, sexual orientation,
11 or mental, physical, or sensory handicaps are serious and increasing.
12 The legislature also finds that crimes and threats are often directed
13 against interracial couples and their children or couples of mixed
14 religions, colors, ancestries, or national origins because of bias
15 and bigotry against the race, color, religion, ancestry, or national
16 origin of one person in the couple or family. The legislature finds
17 that the state interest in preventing crimes and threats motivated by
18 bigotry and bias goes beyond the state interest in preventing other
19 felonies or misdemeanors such as criminal trespass, malicious
20 mischief, assault, or other crimes that are not motivated by hatred,
21 bigotry, and bias, and that prosecution of those other crimes

1 inadequately protects citizens from crimes and threats motivated by
2 bigotry and bias. Therefore, the legislature finds that protection of
3 those citizens from threats of harm due to bias and bigotry is a
4 compelling state interest.

5 The legislature also finds that in many cases, certain discrete
6 words or symbols are used to threaten the victims. Those discrete
7 words or symbols have historically or traditionally been used to
8 connote hatred or threats towards members of the class of which the
9 victim or a member of the victim's family or household is a member.
10 In particular, the legislature finds that cross burnings historically
11 and traditionally have been used to threaten, terrorize, intimidate,
12 and harass African Americans and their families. Cross burnings often
13 preceded lynchings, murders, burning of homes, and other acts of
14 terror. Further, Nazi swastikas historically and traditionally have
15 been used to threaten, terrorize, intimidate, and harass Jewish
16 people and their families. Swastikas symbolize the massive
17 destruction of the Jewish population, commonly known as the
18 holocaust. Therefore, the legislature finds that any person who burns
19 or attempts to burn a cross or displays a swastika on the property of
20 the victim or burns a cross or displays a swastika as part of a
21 series of acts directed towards a particular person, the person's
22 family or household members, or a particular group, knows or
23 reasonably should know that the cross burning or swastika may create
24 a reasonable fear of harm in the mind of the person, the person's
25 family and household members, or the group.

26 The legislature also finds that a hate crime committed against a
27 victim because of the victim's gender may be identified in the same
28 manner that a hate crime committed against a victim of another
29 protected group is identified. Affirmative indications of hatred
30 towards gender as a class is the predominant factor to consider.
31 Other factors to consider include the perpetrator's use of language,
32 slurs, or symbols expressing hatred towards the victim's gender as a
33 class; the severity of the attack including mutilation of the
34 victim's sexual organs; a history of similar attacks against victims
35 of the same gender by the perpetrator or a history of similar
36 incidents in the same area; a lack of provocation; an absence of any
37 other apparent motivation; and common sense.

38 The legislature also finds that a hate crime committed against a
39 victim because of the victim's occupation as a law enforcement
40 officer may be identified in the same manner that a hate crime

1 committed against a victim of another protected group is identified.
2 Affirmative indications of hatred towards the victim's occupation as
3 a law enforcement officer as a class is the predominant factor to
4 consider. Other factors to consider include the perpetrator's use of
5 language, slurs, or symbols expressing hatred towards the victim's
6 occupation as a law enforcement officer as a class; the severity of
7 the attack; a history of similar attacks against victims of the same
8 occupation as a law enforcement officer by the perpetrator or a
9 history of similar incidents in the same area; a lack of provocation;
10 an absence of any other apparent motivation; and common sense.

11 **Sec. 2.** RCW 9A.36.080 and 2010 c 119 s 1 are each amended to
12 read as follows:

13 (1) A person is guilty of malicious harassment if he or she
14 maliciously and intentionally commits one of the following acts
15 because of his or her perception of the victim's race, color,
16 religion, ancestry, national origin, gender, occupation as a law
17 enforcement officer, sexual orientation, or mental, physical, or
18 sensory handicap:

19 (a) Causes physical injury to the victim or another person;

20 (b) Causes physical damage to or destruction of the property of
21 the victim or another person; or

22 (c) Threatens a specific person or group of persons and places
23 that person, or members of the specific group of persons, in
24 reasonable fear of harm to person or property. The fear must be a
25 fear that a reasonable person would have under all the circumstances.
26 For purposes of this section, a "reasonable person" is a reasonable
27 person who is a member of the victim's race, color, religion,
28 ancestry, national origin, gender, occupation as a law enforcement
29 officer, or sexual orientation, or who has the same mental, physical,
30 or sensory handicap as the victim. Words alone do not constitute
31 malicious harassment unless the context or circumstances surrounding
32 the words indicate the words are a threat. Threatening words do not
33 constitute malicious harassment if it is apparent to the victim that
34 the person does not have the ability to carry out the threat.

35 (2) In any prosecution for malicious harassment, unless evidence
36 exists which explains to the trier of fact's satisfaction that the
37 person did not intend to threaten the victim or victims, the trier of
38 fact may infer that the person intended to threaten a specific victim
39 or group of victims because of the person's perception of the

1 victim's or victims' race, color, religion, ancestry, national
2 origin, gender, occupation as a law enforcement officer, sexual
3 orientation, or mental, physical, or sensory handicap if the person
4 commits one of the following acts:

5 (a) Burns a cross on property of a victim who is or whom the
6 actor perceives to be of African American heritage; or

7 (b) Defaces property of a victim who is or whom the actor
8 perceives to be of Jewish heritage by defacing the property with a
9 swastika.

10 This subsection only applies to the creation of a reasonable
11 inference for evidentiary purposes. This subsection does not restrict
12 the state's ability to prosecute a person under subsection (1) of
13 this section when the facts of a particular case do not fall within
14 (a) or (b) of this subsection.

15 (3) It is not a defense that the accused was mistaken that the
16 victim was a member of a certain race, color, religion, ancestry,
17 national origin, gender, occupation as a law enforcement officer, or
18 sexual orientation, or had a mental, physical, or sensory handicap.

19 (4) Evidence of expressions or associations of the accused may
20 not be introduced as substantive evidence at trial unless the
21 evidence specifically relates to the crime charged. Nothing in this
22 chapter shall affect the rules of evidence governing impeachment of a
23 witness.

24 (5) Every person who commits another crime during the commission
25 of a crime under this section may be punished and prosecuted for the
26 other crime separately.

27 (6) For the purposes of this section:

28 (a) "Sexual orientation" has the same meaning as in RCW
29 49.60.040.

30 (b) "Threat" means to communicate, directly or indirectly, the
31 intent to:

32 (i) Cause bodily injury immediately or in the future to the
33 person threatened or to any other person; or

34 (ii) Cause physical damage immediately or in the future to the
35 property of a person threatened or that of any other person.

36 (7) Malicious harassment is a class C felony.

37 (8) The penalties provided in this section for malicious
38 harassment do not preclude the victims from seeking any other
39 remedies otherwise available under law.

1 (9) Nothing in this section confers or expands any civil rights
2 or protections to any group or class identified under this section,
3 beyond those rights or protections that exist under the federal or
4 state Constitution or the civil laws of the state of Washington.

5 **Sec. 3.** RCW 9A.46.060 and 2006 c 138 s 21 are each amended to
6 read as follows:

7 As used in this chapter, "harassment" may include but is not
8 limited to any of the following crimes:

- 9 (1) Harassment (RCW 9A.46.020);
- 10 (2) Malicious harassment (RCW 9A.36.080);
- 11 (3) Telephone harassment (RCW 9.61.230);
- 12 (4) Assault in the first degree (RCW 9A.36.011);
- 13 (5) Assault of a child in the first degree (RCW 9A.36.120);
- 14 (6) Assault in the second degree (RCW 9A.36.021);
- 15 (7) Assault of a child in the second degree (RCW 9A.36.130);
- 16 (8) Assault in the fourth degree (RCW 9A.36.041);
- 17 (9) Assault in the third degree involving a law enforcement
18 officer (RCW 9A.36.031);
- 19 (10) Reckless endangerment (RCW 9A.36.050);
- 20 (~~(10)~~) (11) Extortion in the first degree (RCW 9A.56.120);
- 21 (~~(11)~~) (12) Extortion in the second degree (RCW 9A.56.130);
- 22 (~~(12)~~) (13) Coercion (RCW 9A.36.070);
- 23 (~~(13)~~) (14) Burglary in the first degree (RCW 9A.52.020);
- 24 (~~(14)~~) (15) Burglary in the second degree (RCW 9A.52.030);
- 25 (~~(15)~~) (16) Criminal trespass in the first degree (RCW
26 9A.52.070);
- 27 (~~(16)~~) (17) Criminal trespass in the second degree (RCW
28 9A.52.080);
- 29 (~~(17)~~) (18) Malicious mischief in the first degree (RCW
30 9A.48.070);
- 31 (~~(18)~~) (19) Malicious mischief in the second degree (RCW
32 9A.48.080);
- 33 (~~(19)~~) (20) Malicious mischief in the third degree (RCW
34 9A.48.090);
- 35 (~~(20)~~) (21) Kidnapping in the first degree (RCW 9A.40.020);
- 36 (~~(21)~~) (22) Kidnapping in the second degree (RCW 9A.40.030);
- 37 (~~(22)~~) (23) Unlawful imprisonment (RCW 9A.40.040);
- 38 (~~(23)~~) (24) Rape in the first degree (RCW 9A.44.040);
- 39 (~~(24)~~) (25) Rape in the second degree (RCW 9A.44.050);

1 (~~(25)~~) (26) Rape in the third degree (RCW 9A.44.060);
2 (~~(26)~~) (27) Indecent liberties (RCW 9A.44.100);
3 (~~(27)~~) (28) Rape of a child in the first degree (RCW
4 9A.44.073);
5 (~~(28)~~) (29) Rape of a child in the second degree (RCW
6 9A.44.076);
7 (~~(29)~~) (30) Rape of a child in the third degree (RCW
8 9A.44.079);
9 (~~(30)~~) (31) Child molestation in the first degree (RCW
10 9A.44.083);
11 (~~(31)~~) (32) Child molestation in the second degree (RCW
12 9A.44.086);
13 (~~(32)~~) (33) Child molestation in the third degree (RCW
14 9A.44.089);
15 (~~(33)~~) (34) Stalking (RCW 9A.46.110);
16 (~~(34)~~) (35) Cyberstalking (RCW 9.61.260);
17 (~~(35)~~) (36) Residential burglary (RCW 9A.52.025);
18 (~~(36)~~) (37) Violation of a temporary, permanent, or final
19 protective order issued pursuant to chapter 7.90, 9A.46, 10.14,
20 10.99, 26.09, or 26.50 RCW;
21 (~~(37)~~) (38) Unlawful discharge of a laser in the first degree
22 (RCW 9A.49.020); and
23 (~~(38)~~) (39) Unlawful discharge of a laser in the second degree
24 (RCW 9A.49.030).

25 **Sec. 4.** RCW 9A.36.031 and 2013 c 256 s 1 are each amended to
26 read as follows:

27 (1) A person is guilty of assault in the third degree if he or
28 she, under circumstances not amounting to assault in the first or
29 second degree:

30 (a) With intent to prevent or resist the execution of any lawful
31 process or mandate of any court officer or the lawful apprehension or
32 detention of himself, herself, or another person, assaults another;
33 or

34 (b) With criminal negligence, causes bodily harm accompanied by
35 substantial pain that extends for a period sufficient to cause
36 considerable suffering; or

37 (c) Assaults a law enforcement officer or other employee of a law
38 enforcement agency who was performing his or her official duties at
39 the time of the assault; or

1 (d) Assaults a person employed as a transit operator or driver,
2 the immediate supervisor of a transit operator or driver, a mechanic,
3 or a security officer, by a public or private transit company or a
4 contracted transit service provider, while that person is performing
5 his or her official duties at the time of the assault; or

6 ~~((e))~~ (e) Assaults a school bus driver, the immediate
7 supervisor of a driver, a mechanic, or a security officer, employed
8 by a school district transportation service or a private company
9 under contract for transportation services with a school district,
10 while the person is performing his or her official duties at the time
11 of the assault; or

12 ~~((d) With criminal negligence, causes bodily harm to another
13 person by means of a weapon or other instrument or thing likely to
14 produce bodily harm; or~~

15 ~~(e))~~ (f) Assaults a firefighter or other employee of a fire
16 department, county fire marshal's office, county fire prevention
17 bureau, or fire protection district who was performing his or her
18 official duties at the time of the assault; or

19 ~~((f) With criminal negligence, causes bodily harm accompanied by
20 substantial pain that extends for a period sufficient to cause
21 considerable suffering; or~~

22 ~~(g) Assaults a law enforcement officer or other employee of a law
23 enforcement agency who was performing his or her official duties at
24 the time of the assault; or~~

25 ~~(h))~~ (g) Assaults a peace officer with a projectile stun gun; or

26 ~~((i))~~ (h) Assaults a nurse, physician, or health care provider
27 who was performing his or her nursing or health care duties at the
28 time of the assault. For purposes of this subsection: "Nurse" means a
29 person licensed under chapter 18.79 RCW; "physician" means a person
30 licensed under chapter 18.57 or 18.71 RCW; and "health care provider"
31 means a person certified under chapter 18.71 or 18.73 RCW who
32 performs emergency medical services or a person regulated under Title
33 18 RCW and employed by, or contracting with, a hospital licensed
34 under chapter 70.41 RCW; or

35 ~~((j))~~ (i) Assaults a judicial officer, court-related employee,
36 county clerk, or county clerk's employee, while that person is
37 performing his or her official duties at the time of the assault or
38 as a result of that person's employment within the judicial system.
39 For purposes of this subsection, "court-related employee" includes
40 bailiffs, court reporters, judicial assistants, court managers, court

1 managers' employees, and any other employee, regardless of title, who
2 is engaged in equivalent functions; or

3 ~~((k))~~ (j) Assaults a person located in a courtroom, jury room,
4 judge's chamber, or any waiting area or corridor immediately adjacent
5 to a courtroom, jury room, or judge's chamber. This section shall
6 apply only: (i) During the times when a courtroom, jury room, or
7 judge's chamber is being used for judicial purposes during court
8 proceedings; and (ii) if signage was posted in compliance with RCW
9 2.28.200 at the time of the assault.

10 (2) Assault in the third degree is a class C felony.

11 **Sec. 5.** RCW 36.28A.030 and 1993 c 127 s 4 are each amended to
12 read as follows:

13 (1) The Washington association of sheriffs and police chiefs
14 shall establish and maintain a central repository for the collection
15 and classification of information regarding violations of RCW
16 9A.36.080. Upon establishing such a repository, the association shall
17 develop a procedure to monitor, record, and classify information
18 relating to violations of RCW 9A.36.080 and any other crimes of
19 bigotry or bias apparently directed against other persons because the
20 people committing the crimes perceived that their victims were of a
21 particular race, color, religion, ancestry, national origin, gender,
22 occupation as a law enforcement officer, sexual orientation, or had a
23 mental, physical, or sensory handicap.

24 (2) All local law enforcement agencies shall report monthly to
25 the association concerning all violations of RCW 9A.36.080 and any
26 other crimes of bigotry or bias in such form and in such manner as
27 prescribed by rules adopted by the association. Agency participation
28 in the association's reporting programs, with regard to the specific
29 data requirements associated with violations of RCW 9A.36.080 and any
30 other crimes of bigotry or bias, shall be deemed to meet agency
31 reporting requirements. The association must summarize the
32 information received and file an annual report with the governor and
33 the senate law and justice committee and the house of representatives
34 judiciary committee.

35 (3) The association shall disseminate the information according
36 to the provisions of chapters 10.97 and 10.98 RCW, and all other
37 confidentiality requirements imposed by federal or Washington law.

1 NEW SECTION. **Sec. 6.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of
3 the state government and its existing public institutions, and takes
4 effect immediately.

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